through April 2002, the repair repeat report rates for CLEC nondispatch UNE-P (POTS) orders were higher than those for retail customers. *Id.* at 274. And from December 2001 through April 2002, the repair repeat report rates for nondispatch UNE-P (Centrex) orders were higher than those for retail orders. *Id.* Standing alone, these performance results show statistically significant differences in performance results. However, these repeat trouble reports are also problematic because they can result in customer dissatisfaction.

157. Qwest acknowledges that, in three of the last four months of reported data, it failed to meet the parity standard for trouble report rates for high capacity loops. Qwest Br. at 60. In an effort to divert attention from these failings, Qwest contends that "when performance results are recalculated to exclude trouble reports for which no troubles are found, CLEC trouble rates are lower." Qwest Br. at 60. This is nothing more than a red herring.

158. Elsewhere in its Application, Qwest notes that, because it frequently found, in responding to a trouble report, that the service is "functioning properly," it submitted a proposal to the TAG to exclude from OP-5 (New Service Installation Quality); MR-7 (Repair Repeat Report Rate); and MR-8 (Trouble) "trouble reports as to which (1) Qwest found no problem, and (2) no additional trouble repair was logged within the next 30 days." William Decl. ¶ 20. Qwest also claims that, although the TAG "could not reach agreement on validating this approach in the PIDs, it has provided data in its Application on such troubles "for informational purposes." *Id.* Qwest's arguments are wide of the mark.

159. On August 23, 2001, the ROC TAG expressly rejected Qwest's proposal to modify measures by excluding reports as to which no trouble was found. In September 2001, Qwest submitted a slightly revised version of its proposal; however, Qwest ultimately withdrew that proposal.

160. Moreover, Qwest's "adjusted" recalculation of its trouble report rates based upon the exclusion of so-called "no troubles found" should not be credited. Qwest has provided no empirical data demonstrating that a trouble report is somehow invalid simply because a Qwest technician is unable to find a trouble reported by a customer. Indeed, in commenting on Qwest's proposal to exclude such troubles, a Montana Commission Staff member flatly rejected the notion that a "no trouble found" code somehow proves that the trouble report "was not legitimate:[84]

> 1. There is no reason to assume that a trouble report was not legitimate just because Qwest is unable to find trouble when it responds to customer's trouble report. I would posit that, in the great majority of instances, some problem with phone service prompts a customer to submit a trouble report, even if the problem may no longer be present when Qwest tests the line or tries to isolate the trouble. Excluding these disposition codes from these PID results will mean a significant chunk of trouble reports are not included in Qwest's performance results. According to data Qwest provided to the FCC for ARMIS reports, 29% of residential trouble reports and about 35% of business trouble reports region wise were closed out to "no trouble found" in 1999, the most recent year shown on the FCC chart. http://www.fcc.gov/ccb/armis/sq/documents/6.pdf (go to page 2 for Qwest's chart)
>
> 2. Qwest's proposal to include a TOK/FOK/NTF trouble report in the performance results only if the customer reports a trouble in the subsequent 30 days that is found to be caused by a Qwest network problem makes the inappropriate assumption that a trouble report for which Qwest is unable to find the cause was not a legitimate trouble report unless the customer has recurring trouble. It is not necessarily the case that a trouble report for which Qwest was unable to determine the cause will recur in a month's time, or ever.

[84] Electronic message from Kate Whitney dated September 14, 2001 (attached as Attachment 2).

161. For these same reasons, this Commission should reject Qwest's "adjusted" recalculation of trouble report rates which exclude trouble reports as to which no trouble was allegedly found. *See also* Qwest Br. at 70 (claiming that Qwest's overall trouble rate for line-sharing drops to 1% when no "troubles found" are excluded).

162. Qwest also admits that its performance data show that its performance on MR-4 (percentage of troubles cleared) and MR-6 (mean-time-to restore) "are often outside of parity" for line-shared loops. Qwest Br. at 70. Qwest claims, however, that these disparities in performance are hardly "surprising" *Id.* In embellishing this contention, Qwest contends that: (1) out of service conditions have a higher priority in the "repair queue" than non-out of service conditions; (2) line-shared loops experience more trouble reports than POTS; and (3) the mean time to restore is shorter for retail than wholesale orders because retail (residential and business POTS) experience more out-of service conditions than CLEC line-shared non-dispatch loop orders. Qwest further asserts that, unlike retail POTS troubles, where Qwest clearly is responsible for repair, it is exceedingly more difficult to identify and repair troubles on line-shared loops that may well be the responsibility of the CLEC to repair. Qwest claims that, when these facts are taken into account, its performance is quite "strong." Qwest Br. at 70.

163. At bottom, Qwest's arguments are nothing more than an assault on the parity standard to which it agreed. Having agreed to the parity standard for these measures, Qwest cannot and should not be permitted to retreat from that standard whenever it suits it purposes.

164. However, even accepting Qwest's contentions at face value regarding the inherent complexity of repairs on line-shared loops, Qwest's commercial data still show that Qwest's maintenance and repair performance is poor. Qwest's regional commercial performance data show that the repeat repair rate for CLEC line sharing is approximately 40%; and that, the repeat repair rate for DSL is approximately 25%. These unacceptably high repeat repair report rates suggest that Qwest's technicians have not been trained properly in DSL or line sharing repairs.

4. **Billing**

165. The Commission has held that a BOC "must provide competing carriers with complete and accurate reports on the service usage of competing carriers' customers in substantially the same time and manner that [the BOC] provides such information to itself, and wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete." *Georgia/Louisiana 271 Order* ¶ 173. Qwest admittedly failed the parity standard under BI-4 in February, March and April 2002. Williams Decl. ¶ 157. In an effort to dismiss the significance of these chronic failures, Qwest, true to form, offers excuses. Thus, for example, Qwest alleges that it discovered "a small percentage of total orders, all associated with unbundled loop disconnect orders" that were not completed in the Central Region." *Id.* Qwest asserts that, when it finally discovered the orders and completed them, this caused a miss in February and March. However, by Qwest's own admission, even if these orders were excluded from its results, Qwest still would have failed the parity standard in March. Id. ¶ 158. Qwest next claims that it failed the parity standard because certain orders were excluded from the next available bill due as a result of delays in posting. *Id.* ¶ 159. Although Qwest asserts that it has implemented system improvements to reduce such errors and fully expects its performance to improve, these are nothing more than unfulfilled promises that are entitled to no weight.

B. Iowa

1. **Ordering**

166. **Jeopardy Notices.** Qwest has not met the parity standard for timely jeopardy notice timeliness in Iowa. In ten of the past twelve months from May 2001 through April 2002, the percentage of timely jeopardy notices for CLEC Unbundled Loops and Number Portability orders was substantially lower than that for retail orders. Qwest Iowa Performance Results (ROC 271 PID 4.1) dated May 16, 2002 at 60. For example, in April 2002, only 3.65% of CLEC

Unbundled Loops and Number Portability orders received timely jeopardy notices, while 30.11% of Qwest's retail orders received timely jeopardy notices. *Id.* Although Qwest concedes that it missed the performance standard for this measure for Unbundled Loops in January, February and April 2002, it attributes these misses to SOP-related issues in the Eastern Region. Notarianni/Doherty Decl. ¶ 287.

167. In describing the nature of this problem, Qwest states that, "because the SOP did not require the entry of a miscode many entries were not input." Williams Decl. ¶137. Qwest states further that "[t]o ensure that Qwest did not under-report Qwest misses, all blank codes were attributed to Qwest." William Decl. ¶ 137. Qwest also claims that, if these misses had been coded correctly, its reported performance would have been closer to parity in April. Id. Qwest's arguments are specious.

168. A Qwest representative must populate the miss code field. Qwest's failure to populate the miss code field would appear to be yet another example of deficiencies in Qwest's performance monitoring process attributable to human error. Furthermore, Qwest fails to quantify the number of orders that were impacted by this error or provide any empirical data supporting its assertion that the far majority of these misses were caused by subscribers. Tellingly, Qwest's own analysis reveals that, even if the subscriber-caused misses had been coded properly, it still would have come "closer to parity" but would not have *achieved* parity. To make matters worse, the blank miss code problem also should have impacted other measures such as OP-3 (Commitments Met); OP-4 (Installation Interval); and OP-6 (Delayed Days). Qwest does not explain if its purported "fix" in April also corrected any errors in the data for these measures.

169. **Flow-Through**. As explained in the AT&T OSS Declaration, Qwest's total flow-through rates in Iowa are unstable and far too low. For the last twelve months for which data have been reported, the flow-through rates for UNE-P (POTS) orders submitted via IMA GUI have ranged from 3.32% to 64.18%. For example, in February 2002, the flow-through rate

for UNE-P (POTS) orders submitted via IMA GUI was only 45%. Qwest Iowa Performance Results (ROC 271 PID 4.1) at 43. Although the total flow-through rate for this category of orders increased to 60.78% in March 2002, it declined to only 47.85% in April 2002.

170. Similarly, the flow-through rates for Unbundled Loop LSRs submitted via IMA EDI are not only low, but they also have declined since January 2002. In January 2002, the total flow-through rate for this category of orders was 49.51%. *Id.* at 44. However, in April 2002, the flow-through rate for this category of orders declined approximately 16 percentage points to 33.73%. *Id.* During the last twelve months for which data are reported, the flow-through rates for Unbundled Loop orders submitted via IMA GUI have ranged from 14.99% to 61.95%.

2. Provisioning

171. **Installation Intervals**. Qwest has not met its statutory obligation in the area of provisioning. In January 2002, the installation interval for nondispatch business resale orders was higher than that for retail orders. *Id.* at 98. During that month, installation interval for retail orders was 1.19 days, while the interval for business resale orders was 2.94 days.

172. Qwest's commercial performance data showing a lack of parity in the provisioning of business resale orders are consistent with KPMG's finding in Exception 3086. In that exception, KPMG found that, even after retesting, Qwest's provisioning intervals for business resale orders were not at parity with those for its retail orders. As noted above, because Qwest refused to accept retesting, KPMG found that Qwest failed to satisfy Evaluation Criteria 14-1-34 and 14-1-36 which assessed whether Qwest satisfied the parity standard for provisioning business resale (as well as UNE-P orders).[85] Thus, both Qwest's commercial data, as well as KPMG's finding, confirm that Qwest's provisioning of business resale orders is discriminatory.

[85] KPMG Final Report at 201-202.

173. Qwest admits that, during three out of the last four months for which data have been reported, it failed to meet the benchmark standard for installation commitments met for conditioned loops. Qwest Br. at 62. Noting that it met the benchmark in April 2002, Qwest suggests that this so-called "upward trend" is ample evidence that it has satisfied its statutory obligations in this area. Qwest is wrong. Stability of performance can only be demonstrated by Qwest's ability to perform at the requisite level on a sustained basis. Clearly, one month of compliant performance is wholly insufficient to demonstrate sustained performance.

174. **Work Completion Notices.** The PO-6 PID measures Qwest's timeliness in providing electronic notices to CLECs that the provisioning of the service orders associated with the LSR is complete in the SOP.[86] Under the PID, Qwest is required to provide Work Completion Notices within a six-hour interval for orders placed *via* IMA GUI and IMA EDI.[87] Although Qwest concedes that it missed the benchmark standard for this measure during three of the last four months for orders placed *via* IMA EDI, it contends that these misses "were the result of orders that were listed incorrectly on the report used to perform manual LSR completions." Notarianni/Doherty Decl. ¶ 255. Noting that these errors were corrected in March and that it met the benchmark for this measure in April, Qwest contends that its successful performance in April is proof that "Qwest is capable of issuing timely completion notices for orders placed via IMA EDI." *Id.* Qwest's argument is without merit.

175. Notably, in virtually each instance in which Qwest has shown subpar performance in a single month, Qwest contends that any performance failure during a single month should be ignored because it is not illustrative of performance. In stark contrast, when Qwest meets a performance standard in a single month, Qwest contends that this Commission should rely upon that single month of acceptable performance as incontrovertible proof that its performance is

[86] *See* ROC PID 5.0 at 16 (PO-6).

[87] *See* ROC PID 5.0 at 16 (PO-6).

exemplary. Qwest simply cannot have it both ways. And, in all events, a single month of acceptable performance simply does not and cannot demonstrate stable performance.

3. Maintenance and Repair

176. **Repair Repeat Trouble Reports.** Qwest's record data show that it fails to provide parity access to maintenance and repair functions. Qwest's repair repeat trouble report rates for CLEC orders are higher than those for retail orders. For example, in April 2002, 15.92% of CLEC dispatch UNE-P Centrex orders (within MSAs) experienced repeat troubles, while only 5.88% of Qwest's retail orders experienced repeat troubles. Qwest Iowa Performance Results (ROC 271 PID 4.1) at 246.

177. During that same month, the repair repeat report rates for UNE-P POTS orders were more than twice as high as those for retail customers. *Id.* Indeed, during that month, only 12.5% of Qwest's dispatch retail orders experienced repeat troubles, while 33.33% of UNE-POTS orders experienced such troubles. These stark and statistically significant differences standing alone underscore that Qwest simply is not fulfilling its obligations to provide nondiscriminatory service.

178. As Qwest concedes, in three of the last four months of reported data, it failed to meet the parity standard for trouble report rates for ISDN-capable loops. Qwest Br. at 62-63. In an effort to minimize the significance of its performance failures, Qwest notes that it achieved parity in April, and that its trouble rates for ISDN-capable loops are improving. Qwest Br. at 63. Again, however, Qwest's heavy reliance upon one month's data to show compliant and stable performance falls of its own weight.

4. **Billing**

179. Even Qwest admits that it failed the parity standard for the BI-4A PID in three of the four months of reported data. Williams Decl. ¶ 162. Qwest asserts that it failed to meet the parity standard because of "occasional early bill pull[s]" and because it erroneously excluded orders because of posting delays. Although Qwest contends that "quality control checks" will minimize these problems in the future, it remains to be seen whether Qwest will break the cycle of misses on this metric.

C. Idaho

1. **Ordering**

180. **Flow-Through**. Qwest's total flow-through rates in Idaho are unacceptably low. For example, in March 2002, only 25% of the Unbundled Loop LSRs submitted via IMA GUI flowed through Qwest's systems; and, in April 2002, the flow-through rate for this category of orders was only 28.57%. Qwest Idaho Performance Results (ROC 271 PID 4.1) dated May 16, 2002 at 43.

181. Similarly, the flow-through rates for LNP orders submitted via IMA GUI have been abysmally low. In April 2002, the flow-through rate for LNP orders submitted via IMA GUI was only 40%. These flow-through rates, as well as those for other product categories, show that Qwest continues to rely excessively on manual processing in Idaho.

2. **Provisioning**

182. Qwest acknowledges that its own performance data show disparity in the provisioning of CLEC orders. Williams Decl. ¶ 180. In addition, Qwest concedes that its data for two of the last four months show a lack of parity on the delay days measure for UNE-P-POTS orders. In discussing its performance on the commitments met measure for conditioned loops,

Qwest correctly points out that there were only two months of reported activity, and that it "met the 90% benchmark in March." Williams Decl. ¶ 219. However, Qwest fails to mention that in April it failed the 90% benchmark on commitments met for conditioned loops by ten percentage points.[88]

3. **Maintenance and Repair**

183. **Repair Repeat Reports**. Qwest's own data show that the repair repeat report rates for UNE-P (POTS) (nondispatch orders) in Idaho are higher than those for retail orders. For example, in March 2002, 19.48% of CLEC UNE-P (POTS) nondispatched orders experienced repeat troubles, while only 10.87% of retail orders experienced repeat troubles. *Id.* at 263.

4. **Billing**

184. Qwest admits that it failed to meet the parity standard during the billing process. In this regard, Qwest concedes that it failed to meet the parity standard in March and April 2002 for BI-4A. Williams "Dec. ¶ 160. Although Qwest claims that "revised completion process and enhancements to the posting process" will prevent these types of failures in the future, this is nothing more than a paper promise that has no probative value.

D. Nebraska

1. **Ordering**

185. **Flow-Through**. The total flow-through rates in Nebraska are low. For example, the flow-through rates for Unbundled Loop LSRs submitted via IMA GUI ranged from a low of 25.26% in December 2001 to 46.91% in February 2002. In March 2002, the flow-through rate

[88] *See* Idaho Performance Results, January – April 2002 at 19.

for this category of orders declined to 41.45%. In April 2002, the flow-through rate for this category of orders was only 43.25%. Qwest Nebraska Performance Results (ROC 271 PID 4.1) dated May 16, 2002 at 43.

186. Furthermore, the flow-through rates for UNE-P (POTS) orders submitted *via* IMA EDI have been unstable. Over the past four months of reported data, the flow-through rates for UNE-P (POTS) LSRs submitted via IMA EDI have declined from 71.43% in January 2002 to 40% in April 2002. *Id.* at 44.

2. Provisioning

187. **Installation Intervals**. Qwest has not satisfied the parity standard in its provisioning of CLEC Centrex orders. For example, in March 2002, the average installation interval for nondispatch CLEC Centrex 21 orders was five days, while the installation interval for retail orders was 2.74 days. In April 2002, the average installation interval for CLEC Centrex 21 continued to be longer than that for retail customers. During that month, the average installation interval for CLEC Centrex 21 orders was five days, while the interval for retail orders was 2.71 days. *Id.* at 97.

188. Similarly, the average installation intervals for CLEC UNE-P (POTS) nondispatch orders have been higher than those for retail orders. For example, in January 2002, the average installation interval for UNE-P (POTS) nondispatch orders was 3.95 days, while the interval for retail orders was 2.98 days. *Id.* at 99. In February 2002, the average installation interval for CLEC UNE-P (POTS) nondispatch orders was approximately one day longer than that for retail customers (*i.e.* 3.95 v. 2.99). In April 2002, the average installation interval for CLEC UNE-P (POTS) nondispatch orders increased to 5.62 days, while the installation interval for retail orders was 3.34 days. *Id.* Of course, these differences in installation intervals are consistent with KPMG's findings during the OSS test. Again, this evidence of discriminatory installation intervals

affirms the findings by KPMG with respect to installation intervals (non-dispatch) for UNE-P orders.

189. Qwest acknowledges that, in two of the last four months of reported data, it failed to meet the benchmark standard for installation commitments met for analog loops. Qwest Br. at 63. Similarly, Qwest also concedes that, in two of the last four months of reported data, it failed to perform at parity when installing conditioned loops for CLEC customers. *Id.* Although Qwest offers a variety of excuses for its performance failings, the fact remains that it failed to meet the performance standard for this measure for two of four months, and that its performance is neither compliant nor stable.

3. Maintenance and Repair

190. Qwest has not met its statutory obligations in the area of maintenance and repair. The repair repeat trouble report rates for UNE-P (POTS) nondispatch orders are higher than those for retail orders. For example, in February 2002, UNE-P (POTS) nondispatch orders experienced more than three times the repeat trouble experienced by retail customers. During this month, 37.04% of CLEC UNE-P (POTS) nondispatch orders experienced repeat troubles, while only 12.22% of retail orders experienced repeat troubles. *Id.* at 255. In March 2002, 25% of UNE-P (POTS) nondispatch orders experienced repeat troubles, while only 14.24% of retail orders experienced repeat troubles. In April 2002, 20% of UNE-P (POTS) nondispatch orders experienced repeat troubles, while 14.05% of retail orders experienced repeat troubles. *Id.*

E. North Dakota

1. Ordering

191. **Jeopardy Notices**. Qwest has not met the parity standard with respect to its issuance of timely jeopardy notices. For example, in January 2002, only 5.06% of CLEC

Unbundled Loops and Number Portability orders received timely jeopardy notices, while 16.28% of retail orders received timely jeopardy notices. *See* Qwest North Dakota Performance Results, January – April 2002, Qwest Attach. 5, App. D., PO-B at 7. In April 2002, only 7.69% of CLEC Unbundled Loops and Number Portability orders received timely jeopardy notices, while 26.03% of retail orders received timely jeopardy notices. *Id.* Although Qwest concedes that it "had multiple misses" on the jeopardy notice measure, it asserts that "the disparities between retail and wholesale in these results were not competitively significant." Williams Decl. ¶ 134. Qwest's assertion borders on the frivolous. The differences between the jeopardy notice timeliness rates for retail orders and Unbundled Loops and Number Portability orders have ranged from approximately 10% to over 18% – – differences that cannot legitimately be characterized as "insignificant."

192. Qwest also attempts to minimize its performance failures in this area by asserting that it attributed all blank miscodes as Qwest misses, but then discovered "that 71% of all such misses in the Eastern region were subscriber misses in April." Williams Decl. ¶ 137. Qwest argues further that "if these misses had been coded properly, its performance would have been "closer to parity." *Id.*[89] There are at least two problems with Qwest's analysis. First, even assuming *arguendo* that Qwest's analysis is correct, that analysis only relates to its performance in April and does not explain its performance misses in January and February 2002. Second, even accepting Qwest's explanation at face value, the fact remains that, even if these purported subscriber-caused misses had been coded properly, Qwest's reported performance would only "have been closer to parity" but not *at* parity. It should also be noted that the failure of Qwest personnel to populate the miss code is yet another example of human error by Qwest representatives.

[89] *See also* Notarianni/Doherty Decl. ¶ 257 (noting that Qwest missed the parity standard for jeopardy notice timeliness in January and April 2002, "in part" due to SOP-related matters.

193. **Flow-Through**. As explained in the AT&T OSS Declaration, during the last twelve months for which data have been reported, the flow-through rates for Unbundled Loop LSRs submitted over IMA GUI have been low. For example, the total flow-through rate for Unbundled Loop orders submitted *via* IMA GUI was only 25.10% in February 2002. *Id.* at 39. In April 2002, the flow-through rate for Unbundled Loops submitted via IMA GUI increased to 44.86%, however, even that rate is far too low. *Id.*

194. Similarly, the total flow-through rates for LNP LSRs submitted via IMA GUI are unacceptably low and wildly erratic. In January 2002, only 30% of LNP orders flowed through; however, even this unacceptably low flow-through rate for this category of orders plummeted to a paltry rate of 3.45% in February 2002. In March 2002, only 33.33% of LNP orders received via IMA GUI flowed through; and, in April 2002, the flow-through rate declined further to only 22.73%.[90]

195. Additionally, the flow-through rates for UNE-P (POTS) orders submitted via IMA GUI are low. Indeed, in January 2002, the flow-through rate for this product category was only 28.95%; and in February 2002, the flow-through rate for this product category was 34.43%. In March 2002, the flow-through rate for these orders declined to 28.98%, and in April 2002 the flow-through rate declined even further to an abysmally low rate of 10% in April 2002. *Id.*, PO-2A-1.

196. The flow-through rates for Resale orders submitted via EDI are also unreasonably low. In January 2002, the flow-through rate for Resale orders submitted via EDI was only 13.89%. *Id.*, PO-2A-2. In February 2002, the flow-through rate for Resale orders submitted *via* EDI declined to12.12%; and in March 2002, the rate plummeted to 4%. Although the

[90] North Dakota Performance Results, January – April 2002, Qwest Attach. 5, App. D, P0-2A-1 at 5.

flow-through rate for this product category increased to 15.38% in April 2002, that rate is still astonishingly low.

2. Provisioning

197. **Average Installation Intervals.** Qwest has not satisfied its statutory obligations in the area of provisioning. For example, in March 2002, the average installation interval for retail orders was 5.94 days, while the average installation interval for UNE-P (Centrex) dispatch orders (within MSAs) was 29.33 days -- almost five times longer. *Id.* at 82. Although Qwest attempts to dismiss the significance of this failure by pointing to the low CLEC volumes reported for UNE-P Centrex orders, the fact remains that, the installation intervals for these low order volumes were approximately five times longer than those for retail orders during periods of modest CLEC order activity. Moreover, although Qwest dismisses any performance failure associated with small order volumes, it has no difficulty touting its performance in its Application – even when successful performance is associated with small order volumes.[91]

198. Similarly, Qwest has failed to provision Centrex orders at parity. In March 2002, the average installation interval for Centrex (nondispatch) orders was 4 days, while the average installation interval for retail orders was 2.75 days. *Id.* at 88.

199. **Work Completion Notices**. Conceding that, in three of the past four months, it failed the benchmark standard for work completion notice timeliness for orders placed *via* IMA

[91] In its Application, Qwest has included certain "blue" charts that summarize its performance over four months. Williams Decl. ¶ 32. Each cell within the chart purports to show Qwest's performance for a particular product or disaggregation of service. Qwest states that "the darkest shade of blue...means Qwest met the applicable performance standard," and that the "slightly lighter shade of blue in a cell indicates" that the data "invariably support checklist approval." *Id.* ¶ 34. Attachment 3 hereto consists of Qwest's charts which have been revised to show the scores of examples where Qwest claims checklist compliance for products and categories with low order volumes. In the attached charts, a diagonal slash mark indicates a volume less than or equal to 30, and an "X" indicates a volume less than or equal to 10.

EDI, Qwest, nevertheless, asserts that its ability to satisfy the benchmark in April confirms that it issues timely work completion notices. Notarianni/Doherty Decl. ¶ 257. Parroting the excuse for its performance failure on this measure in Iowa, Qwest contends that its performance failures in North Dakota were due to the incorrect listing of service orders on the report used to generate manual LSR completions. As noted above, this excuse simply highlights that human error continues to plague Qwest's performance reporting processes. And, in all events, one month of compliant performance is insufficient to prove that Qwest's performance is both compliant and stable.

3. Maintenance and Repair

200. Consistent with its subpar performance in other states, Qwest's repair repeat report rates in North Dakota demonstrate a lack of parity. For example, in February 2002, 20% of CLEC business nondispatch orders experienced repeat troubles, while only 7.50% of retail orders experienced repeat troubles. In April 2002, 40% of CLEC business nondispatch orders experienced repeat troubles, while only 10.84% of retail orders experienced repeat troubles. *Id.* at 212.

201. Additionally, in February 2002, 36.36% of UNE-P (POTS) nondispatch orders experienced repeat troubles, while only 13.92% of retail orders experienced such troubles. In April 2002, 23.08% of UNE-P (POTS) nondispatch orders experienced repeat troubles, while only 12.85% of retail orders experienced repeat troubles. *Id.* at 213. These statistically significant differences in performance results belie Qwest's claims that it has fulfilled its statutory obligations.

4. Billing

202. Qwest admits that, in February 2002, it missed the parity standard for BI-4A "by barely over one percent." Williams Decl. ¶ 166. What is more troubling is that Qwest contends

that it "discovered certain reporting errors limited to BI-4A" that it allegedly has corrected. These errors include, *inter alia*, "a sequence error in the reporting process that increased the reported percentage of incomplete bills;" incorrect dates to measure bill completeness; a failure "to account for CLECs' specific billing dates on resale accounts;" and erroneous processes of "change of responsibility orders." *Id.* n 174. These errors in the billing process are fundamental errors in the calculation of the BI-4A measurement that Liberty and CGE&Y should have uncovered during their audit of this measure. Their collective failure to identify these fundamental errors call into serious question the thoroughness of their review process.

203. Given the deficiencies in its performance that were uncovered by KPMG and Liberty and which are confirmed by its own commercial data, Qwest's assertions regarding its full compliance with its Section 271 obligations ring hollow. Invariably, when Qwest is faced with its own data, it offers a host of excuses or relies on promises of expected future improvement as a basis for Section 271 approval. However, this Commission, has stressed that "paper promises" and unfulfilled commitments are entitled to no evidentiary weight. *Michigan 271 Order*, ¶ 55; *BellSouth South Carolina Order*, ¶ 38. The Commission has also emphasized that, when a BOC files a Section 271 application, it is expected that the carrier is already in full compliance with the requirements of Section 271 and submits with its application sufficient factual evidence to support such compliance. *Michigan 271 Order*, ¶ 55. Qwest has not met and cannot meet this basic test.

IV. QWEST'S PERFORMANCE ENFORCEMENT PLANS ARE INADEQUATE.

204. There is no factual basis for Qwest's claims that its performance enforcement plans establish a comprehensive system of remedies that will ensure that it will continue to satisfy its performance obligations to CLECs after it receives long distance authorization. Indeed, it is clear that those remedy plans provide no meaningful protection against backsliding in the event that Qwest is authorized to provide long distance services.

205. As the Commission has recognized, the public interest analysis in Section 271(d)(3)(C) is an independent element of the "statutory checklist" that "requires an independent determination."[92] As part of that analysis, the Commission has recognized that a BOC's performance monitoring and enforcement plan can "constitute probative evidence that the BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest."[93] Importantly, "in all of the previous applications [the FCC has] granted to date, the applicant was subject to an enforcement plan administered by the relevant State commission to protect against backsliding after BOC entry into the long-distance market." *Pennsylvania 271 Order* ¶ 127 n. 439.

206. The principal purpose of an anti-backsliding plan is to provide sufficient monetary incentives for a BOC to continue providing CLECs the nondiscriminatory support that is required after Section 271 approval. After a BOC is authorized under Section 271 to provide long distance services, it will no longer have the powerful business incentives provided by the lure of Section 271 approval to provide nondiscriminatory support for CLECs. Indeed, after Section 271 approval, the BOC will have powerful incentives to exploit its position as the supplier of facilities and services essential to competitors to drive those competitors out of both the local and long distance markets.

207. As a consequence, it is necessary to counterbalance the BOC's very real, anticompetitive business incentives with the prompt application of monetary consequences based on an anti-backsliding plan that will promptly detect and deter such behavior. In order to offset the anticompetitive incentives that are inherent in the BOC's position, an anti-backsliding plan must have sufficient and definite consequences to preclude the BOC from rationally concluding

[92] *New York 271 Order* ¶ 423.

[93] *New York 271 Order* ¶ 429.

that it stands more to gain by discriminating and paying the consequences under the remedy plan, than by competing fairly on a level playing field.

208. As the Commission explained in its *Michigan 271 Order*, to provide the most effective possible deterrent against discriminatory performance after a Section 271 application is granted, an anti-backsliding plan should include "appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with the established performance standards."[94] To meet this standard, an anti-backsliding plan must have sufficient and immediate monetary consequences to dissuade the BOC from exercising its natural incentives to leverage its monopoly power in the local market, together with its position as the primary supplier of wholesale inputs to CLECs, to harm competition in both the local and long distance markets. In that connection, the Commission has emphasized the importance of remedial measures that are "automatically triggered" by noncompliant conduct:[95]

> [A]s part of our public interest inquiry, we would want to inquire whether the BOC has agreed to private an *self-executing enforcement mechanisms* that are automatically triggered by noncompliance with the applicable performance standard without resorting to lengthy regulatory or judicial intervention. The absence of such enforcement mechanisms could significantly delay the development of local exchange competition by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent.

209. In its *New York 271 Order*, the Commission identified the following key elements in a performance monitoring and enforcement plan that would support a showing "that markets will remain open after grant of the application:"[96]

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[94] *Michigan 271 Order* ¶ 394. *See also Second BellSouth Louisiana Order* ¶ 364.

[95] *Michigan 271 Order* ¶ 394.

[96] *New York 271 Order* ¶ 435.

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards
- clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
- a reasonable structure that is designed to detect and sanction poor performance when it occurs;
- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and
- reasonable assurances that the reported data is accurate.[97]

210. In its Application, Qwest asserts that the performance assurance plans in Colorado, Idaho, Nebraska and North Dakota satisfy all of the key criteria identified by this Commission in its *New York 271 Order*. Qwest's assertion is meritless. In order to place these issues in context, a brief summary of the development of the performance enforcement plans of the states that are the subject of Qwest's Application follows.

A. Development Of The PAP

211. In August 2000, 11 of the 14 states in the Qwest region invited parties to participate in collaborative proceedings to develop a performance enforcement plan.[98] This Regional Oversight Committee Post Entry Performance Plan ("ROC PEPP") collaborative is composed of state commission staff members, CLECs, and Qwest.

[97] *Id.* ¶ 433.

[98] The states that participated in this process to develop a performance plan are: Idaho, Iowa, Nebraska, New Mexico, North Dakota, Montana, Oregon, South Dakota, Utah, Washington, and Wyoming. As Qwest correctly notes, Colorado withdrew from the Regional Oversight Committees' Post-Entry Performance Plan ("ROC PEPP") to develop a performance enforcement plan tailored to Colorado. McDaniel Colorado Process Decl. ¶ 47. Minnesota and Arizona elected not to participate in the ROC PEPP.

212. During ROC PEPP proceedings, Qwest proffered the Texas performance enforcement plan as the starting point for collaborative discussions. However, the progress of the PEPP collaborative was halted abruptly in May 2001 when Qwest determined that any further proceedings would be unproductive. At the time, many issues regarding the terms and conditions of an enforcement plan remained unresolved.

213. Because the proceedings were at a standstill, nine state commissions, including Idaho, Iowa, Nebraska and North Dakota, retained Liberty to evaluate the remaining open issues under Qwest's Performance Assurance Plan ("QPAP") during the collaborative process. As a part of that process, Qwest submitted a revised QPAP and interested parties submitted comments to Liberty's facilitator, John Antonuk. On October 22, 2001, Mr. Antonuk issued a report on the QPAP on which parties commented.

214. On September 26, 2001, the Hearing Commissioner issued a decision on the CPAP. On April 10, 2002, the Colorado Public Utilities Commission ("CPUC") issued its final decision on the CPAP.

215. On March 7, 2002, the Idaho Public Utilities Commission ("IPUC") issued a decision which, *inter alia*, recommended certain modifications to Qwest's QPAP. On May 24, 2002, Qwest filed its revised QPAP which incorporated the changes the IPUC recommended. On June 10, 2002, the IPUC found that Qwest's revised QPAP met the public interest requirements under Section 271. AT&T recently filed a motion for reconsideration in which it argued that the Idaho QPAP is wholly insufficient to assure statutory compliance after Section 271 relief. The IPUC has not ruled upon that motion.

216. On April 23, 2002, the Nebraska Public Service Commission ("NPSC") issued a decision on the QPAP. After considering Qwest's motion for rehearing, the NPSC, in a decision

issued on May 29, 2002, granted in part and denied in part Qwest's' motion. On May 31, 2002, Qwest filed a revised QPAP before the NPSC.

217. On May 7, 2002, the Iowa Utilities Board ("IUB") issued its Conditional Statement on the QPAP. Following comments by the parties, the IUB issued another decision on the QPAP on June 7, 2002. On June 10, 2002, Qwest filed a revised QPAP with the IUB. On that same day, AT&T filed a Notice of Non-Compliance and Motion to Stay the decision. On June 12, 2002, the IUB found that Qwest's revised QPAP complied with the IUB's prior orders.

218. On May 22, 2002, the North Dakota Public Service Commission ("NDPSC") issued an Interim Consultative Report on the QPAP in which it recommended additional modifications to the QPAP. On May 28, 2002 Qwest issued a second QPAP that incorporated the NDPSC's proposed changes. On June 6, 2002, the NDPSC determined that Qwest's revised QPAP was fully compliant.

219. As discussed in more detail, all of the enforcement plans suffer from a number of infirmities that preclude them from providing any meaningful protection against discriminatory conduct by Qwest. Thus, Qwest's reliance on these enforcement plans is premature.

B. Qwest's Inaccurate Data Fatally Compromise the Remedy Plans.

220. No performance enforcement plan can be effective unless it is based upon a comprehensive set of measures which produce accurate results, as well as self-executing enforcement mechanisms that can effectively deter a BOC from engaging in anticompetitive conduct after Section 271 entry. The performance enforcement plans presently in place in the states which are the subject of Qwest's Application cannot possibly serve as effective tools to assure future statutory compliance.

221. As noted above, Qwest's performance data are inaccurate and untrustworthy. Although Qwest asserts that the audits and data reconciliation processes conducted to date have verified the accuracy and reliability of its performance data, the audits and processes on which Qwest relies were so limited in scope and procedurally and substantively flawed that they cannot reasonably be characterized as reliable indicators of the integrity of Qwest's data.

222. Significantly, even these flawed audits and data reconciliation processes reveal that Qwest's performance monitoring and reporting processes are plagued with errors that cannot and must not be brushed aside. Because performance data serve as the springboard for performance remedies payments under the CPAP and QPAPs, the unreliability of Qwest's performance data fatally compromises the efficacy of all of the performance remedy plans that are the subject of this Application. However, even assuming *arguendo* that Qwest's data are accurate and trustworthy -- and they certainly are not -- the structural defects in Qwest's remedy plans preclude them from serving as effective tools to prevent future backsliding.

C. The Remedy Plans Omit Important Measures.

223. No antibacksliding plan can achieve its intended goal of deterring anticompetitive conduct unless, *inter alia*, it is based on a robust set of measures, *New York 271 Order*, ¶ 433. The current versions of the CPAP and QPAPs included in the Application are flawed both in their comprehensiveness and their ability to capture actual performance. The performance plans cannot possibly capture Qwest's actual performance in full because they exclude measures that are necessary to detect discriminatory performance. As a result, Qwest will suffer no financial consequences under its remedy plans even for grossly discriminatory conduct in these areas. Moreover, the exclusion of these measures in the performance remedy plans violates the basic requirement that an enforcement plan must "encompass a comprehensive range of carrier-to-carrier performance." *New York 271 Order* ¶ 433.

224. The omitted measures – measures that KPMG strongly recommended are necessary order to detect the full extent to which Qwest makes errors during the manual processing of orders – are neither trivial nor insignificant. One striking example is the failure of the current CPAP and QPAPs to include any measure on service order accuracy. Thus, under Qwest's current remedy plans, it suffers no financial consequences for poor performance in this area. Given the substantial problems in Qwest's performance monitoring and reporting processes that are, in large measure, attributable to human error, it is absolutely critical that Qwest's performance monitoring and remedy plans include measures that can monitor and accurately capture that performance.

D. The Idaho QPAP Limits the Remedies CLECs May Pursue.

225. Aside from these deficiencies, other provisions in Qwest's QPAP fail to provide sufficient incentives to assure that Qwest will fulfill its statutory obligations in the aftermath of Section 271 relief. In this regard, in every proceeding in which Section 271 approval has been granted, the Commission has found that the performance remedy plan adopted by the State commission was not "the only means of assuring that [the BOC] continues to provide nondiscriminatory service to competing carriers. *Texas 271 Order* ¶ 424. *See also New York 271 Order* ¶ 430; *Georgia/Louisiana 271 Order* ¶ 296. The Commission has emphasized the importance of assessing the efficacy of performance enforcement plans "in the context of other regulatory and legal processes that provide additional positive incentives" to the BOC to satisfy its statutory obligations after Section 271 relief. *See New York 271 Order* ¶ 430.

226. Similarly in every proceeding in which Section 271 approval has been granted, the Commission found that the BOC applicant "faces other consequences if it fails to sustain a high level of service to competing carriers, including: "federal enforcement action pursuant to Section 271(d)(6), liquidated damages under dozens of interconnection agreements, and remedies associated with antitrust and other legal actions." *Texas 271 Order* ¶ 424. *See also New York*

271 Order ¶ 435; *Pennsylvania 271 Order* ¶ 130 n. 448; *Georgia/Louisiana 271 Order* ¶ 296. However, the QPAP approved by the Idaho Public Utilities Commission precludes CLECs from obtaining such alternative forms of relief.

227. In this regard, on March 7, 2002, the IPUC issued its Commission's Decision on Qwest's Performance Assurance Plan in which it stated that, although the QPAP was "well on its way" to meeting the public interest standards for Section 271 approval, Qwest needed to make certain revisions to its QPAP. In that decision, the IPUC approved the following provision in Section 13.6 of the QPAP:

> By electing remedies under the PAP, CLEC waives any causes of action based on a contractual theory of liability, and any rights of recovery under any rights of recovery under any other theory of liability (including but not limited to a regulatory rule or order) to the extent recovery is related to harm compensable under a contractual theory of liability (even though it is sought through a non-contractual claim, theory or cause of action.)

228. Thus, the language approved by the IPUC substantially and inappropriately limits the remedial relief that CLECs may seek for discriminatory conduct. In its March 7 decision, the IPUC, expressing a preference for uniformity among the States, encouraged the parties to monitor developments in other states and report significant changes that should be imported into the Idaho PAP.

229. On April 15, 2002, AT&T filed Supplemental Comments and a Motion for Reconsideration of the IPUC's March 7, 2002 Order in which it urged the IPUC to reject the language in the QPAP relating to exclusivity of remedies. Noting that the QPAP precluded CLECs from pursuing both contractual and non-contractual remedies and that such provisions were inconsistent with this Commission's decisions, as well as the QPAP provisions in other

Qwest states, AT&T urged the IPUC to adopt a provision that would permit CLECs to pursue remedies outside the confines of the QPAP.

230. In buttressing its position that the exclusivity provisions within the Idaho QPAP are inherently inequitable, AT&T pointed out that, numerous state commissions had expressly rejected Section 13.6 in the QPAP because it "severely, and inequitably, limits the alternative remedies available to CLECs."[99] In rejecting the very provision at issue, the Washington Commission found that Section 13.6 in the QPAP not only unduly restricted the remedies available to CLECs, but it also appeared to contradict other provisions in the plan. In this regard, on the one hand, Section 13.5 of the QPAP provides that "[t]he application of the assessments and damages provided for herein is not intended to foreclose other non-contractual legal and non-contractual regulatory claims and remedies that may be available to a CLEC." *Id.* § 13.5. However, Section 13.6 suddenly reverses course and "then eliminate[s] any alternative remedies for CLECs."[100]

231. Similarly, the Montana Commission, expressly "reject[ed] as unreasonable (QPAP language) which would preclude CLECs opting into the QPAP from seeking other remedies when they sustain extraordinary losses as a result of Qwest's non-compliant performance."[101] The

[99] Thirtieth Supplemental Order, Commission Order Addressing Qwest's Performance Assurance Plan, *In the Matter of the Investigation into U.S. West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. UT-00-3022, *In the Matter of U.S. West Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040 ("*Washington Commission Thirtieth Supplemental Order*") (April 2002) at 50.

[100] Washington Commission Thirtieth Supplemental Order at 47-48.

[101] Preliminary Report on Qwest's Performance Assurance Plan and Request for Comments on Findings, Utilities Division Docket No. D2000.5.70, Montana Public Utilities Commission (February 4, 2002) at 15.

Wyoming Commission also rejected Qwest's proposal to restrict CLECs from pursuing alternative forms of relief, stating:[102]

> It is possible that litigation between Qwest and a local service competitive could arise if problems could not be otherwise resolved under the QPAP or the SGAT. The QPAP draft removes the ability of a competitor to go into court and sue Qwest for contract damages or damages that could be proven under a contractual theory of liability. It would force the competitor to elect the QPAP as a 'liquidated damages' remedy. It would be a mistake to consider the QPAP or the SGAT in general as a simple contract; and it would be a further mistake to require simple precepts of general contract law to limit its effectiveness. The QPAP is a document based on the requirements of federal telecommunications law, and its formation is driven not by a mutual desire to engage in local exchange telecommunications services competition but by the legal requirements that Qwest's local markets be fairly opened to competition.... None of the parties to either the Wyoming or the multi-state proceeding could produce evidence showing that there would not be instances in which the QPAP might be an inadequate remedy for unfair, anticompetitive or monopolistic behavior by Qwest.... Therefore, we will not allow the QPAP to limit the ability of a competitor to go into court on any theory of liability or with regard to any element of damages.

232. Furthermore, the Colorado Commission also rejected Qwest's efforts to limit CLEC remedies under the QPAP. The Colorado Commission determined that a CLEC may pursue contractual remedies if it can "present a reasonable theory of damages for the deficient performance at issue and evidence of real world economic harm that, as applied over the last six months, establishes that actual penalties collected for deficient performance in the relevant area do not redress the extent of the competitive harm."[103] The CPAP also provides, that if a CLEC's

[102] First Order on Group 5A Issue, Docket No. 70000-7A-00-599 (Public Service Commission of Wyoming) (January 30, 2001) at 4, *affirmed* Order Denying Petition for Reconsideration and Setting Public Hearing and Procedure.

[103] Decision on Motions for Modifications and Clarification of the Colorado Performance Assurance Plan, Decision No. R01-1142-I § 16.6, *affirmed* Decision on Remand and Other Issues

contract cause of action relates to areas of performance not covered by the QPAP, "no such procedural requirement shall apply." Further, under the CPAP, CLECs are not banned from pursuing any other remedies in a court of law. *Id.*, § 16.4.[104]

233. On May 24, 2002, Qwest filed the most recent version of its Idaho Statement of Generally Available Terms and Conditions ("Idaho SGAT"). The Idaho QPAP which is, Exhibit K to the Idaho SGAT,[105] contains the following objectionable language which served as the basis for AT&T's Motion for Reconsideration:

> This PAP contains a comprehensive set of performance measurements, statistical methodologies, and payment mechanisms that are designed to function together, and only together, as an integrated whole. To elect the PAP, CLEC must adopt the PAP in its entirety, in its interconnection agreement with Qwest. By electing remedies under the PAP, CLEC waives any causes of action based on a contractual theory of liability, and any right of recovery under any other theory of liability (including but not limited to a state utility regulatory commission or Federal Communications Commission rule or order) to the extent such recovery is related to harm compensable under a contractual theory of liability (even though it is sought through a non-contractual claim, theory, or cause of action).

234. Shortly after Qwest filed its SGAT, the Idaho Commission entered an Order on June 10, 2002 ("June 10 Order") in which it stated that it believes the QPAP "now adequately satisfies the FCC's zone of reasonableness standard of review."[106] However, the June 10 Order glaringly omits any reference to AT&T's Motion for Reconsideration, fails to address the issue of

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Pertaining to the Colorado Performance Assurance Plan (adopted April 10, 2002) at § 16.6. Notably, Qwest has not objected to this provision in Colorado.

[104] Although Qwest asserted in state proceedings that its QPAP was modeled after the Texas performance enforcement plan, the Texas plan states explicitly that CLECs are not foreclosed from pursuing non-contractual remedies.

[105] Qwest Idaho SGAT Third Revised Exhibit K, May 24, 2002 § 13.6.

[106] June 10 Order at 4.

exclusivity of remedies, and never mentions any of the Statements of Supplemental Authority that AT&T filed between April 26, 2002 and June 10, 2002 relating to the QPAP.[107] The Idaho Commission's failure to consider AT&T's motion for reconsideration is on this June 10 Decision is perplexing because the Commission expressly requested that parties advise it of rulings from other states regarding the QPAP.

235. In all events, unlike other BOCs that have obtained Section 271 approval, Qwest will not be subject to a full panoply of remedial measures if it fails to satisfy its performance obligations. Under the Idaho QPAP, if Qwest fails to sustain an acceptable level of service to competing carriers, "it will not face other consequences" such as "remedies associated with anti-trust and legal actions." *Georgia/Louisiana 271 Order* ¶ 296. Under the Iowa QPAP, any CLEC that adopts the PAP and incurs extraordinary losses as a result of Qwest's discriminatory performance is foreclosed from pursuing non-contractual remedies. Permitting Qwest to obtain 271 approval based upon a remedial plan that permits Qwest to avoid facing serious consequences for noncompliant conduct would set a dangerous precedent. Moreover the Idaho QPAP is plainly contrary to this Commission's well-established precedent which emphasizes the critical importance of other forms of remedial measures that can effectively deter a BOC from engaging in anticompetitive conduct after Section 271 approval.

E. <u>The Iowa QPAP Grants Qwest the Right to Challenge State Authority</u>.

236. Contrary to Qwest's claim, the Iowa QPAP does not meet this Commission's criterion that it be a self-executing mechanism that "does not leave the door open unreasonably to litigation and appeal." The mere fact that Qwest remains free under the Iowa QPAP to challenge,

[107] *See* AT&T's Additional Statement of Supplemental Authority (April 26, 2002); AT&T's Additional Statement of Supplemental Authority (May 1, 2002); AT&T's Third Additional Statement of Supplemental Authority (May 8, 2002); AT&T's Fourth Additional Statement of Supplemental Authority (May 16, 2002); AT&T's Fifth Additional Statement of Supplemental Authority (May 2002); AT&T's Sixth Additional Statement of Supplemental Authority (June 5, 2002).

at any time, the Iowa Commission's authority to impose any changes to the plan demonstrates that it fails to satisfy one of the key characteristics that this Commission has deemed essential in evaluating the effectiveness of enforcement plans.

237. This Commission has recognized the important role that state regulatory agencies must play in monitoring and enforcing a BOC's compliance with its statutory obligations after Section 271 relief is granted. Indeed, this Commission has emphasized that "state performance monitoring and post-entry enforcement"[108] mechanisms are "*critical* complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6)."[109]

238. Thus, for example, in approving Bell Atlantic's New York 271 application, the Commission emphasized that the New York PSC was "committed to supervising the implementation of [performance assurance] plans" that were designed to assure that the markets remained open in the wake of Section 271 relief. *New York 271 Order* ¶ 12. Because of the vital role that the New York PSC played and would continue to play in monitoring and adjusting the performance monitoring and remedy plan as needed, this Commission was confident that the New York monitoring and enforcement plan would be revised as needed "to reflect changes in the telecommunications industry and in the New York market." *Id.*, ¶ 438.

239. In approving SWBT's Kansas and Oklahoma 271 applications, the Commission acknowledged that both the Kansas and Oklahoma Commissions had the authority to review and modify the performance measurement plans and take swift action if SWBT failed to comply with its performance obligations. *Kansas/Oklahoma 271 Order* ¶ 275 n. 839.

240. Similarly, in its *Pennsylvania 271 Order* the Commission stated that:[110]

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[108] *Texas 271 Order* ¶ 420.

[109] *Texas 271 Order* ¶ 420, n.1219 (emphasis added); *New York 271 Order* ¶ 429, n. 1316; *Kansas/Oklahoma 271 Order* ¶ 269, n. 828; *Massachusetts 271 Order*, ¶ 236, n. 757.

[110] *Pennsylvania 271 Order* at ¶ 128 (emphasis added).

> We recognize that states may create plans that ultimately vary in their strengths and weaknesses as tools for post-section 271 authority monitoring and enforcement. We also recognize that the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time. We anticipate that state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect commercial performance in the local marketplace.

241. In its *Georgia/Louisiana 271 Order*, the Commission again recognized the critical importance that state agencies must play in revising remedial plans "to most accurately reflect actual commercial performance in the local marketplace:"

> We also recognize that the development of performance measures and appropriate remedies is an evolutionary process **that requires changes to both measures and remedies over time** . . . . We anticipate that these state Commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace. We note that both the Georgia and Louisiana Commissions anticipate modifications to BellSouth's SQM from their respective pending six-month reviews. We anticipate that these state Commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace . . . .[111] Both the Georgia and Louisiana Commissions will continue to subject BellSouth's performance metrics to rigorous scrutiny in their on-going proceedings and audits; thus, it is not unreasonable for us to expect that these commissions could modify the penalty structure if BellSouth's performance is deficient post approval.[112]

242. In stark contrast, the Iowa QPAP expressly grants Qwest the right to challenge the very authority of the State to impose any changes to the plan. This provision leaves open the very

[111] *Georgia/Louisiana 271 Order* at ¶ 294 (footnote omitted) (emphasis added).

[112] *Id.* at ¶ 300.

real possibility that Qwest could seek to dismantle every change to the plan that is not to its liking. Moreover, given Qwest's on-the-record statements challenging the authority of the States to impose *any* performance remedies upon it, the specter of future challenges by Qwest is highly likely.

243. Indeed, at the outset of every proceeding in which the performance enforcement plan has been raised in the Qwest region, Qwest has consistently maintained that the State has *no* authority to impose any performance enforcement plan. Noting that a performance enforcement plan is purely "voluntary" and is not a condition of Section 271 approval, Qwest has insisted that the State regulatory authority "lacks the authority to impose the plan on Qwest, and therefore does not have any authority to subsequently modify it."[113] Indeed, Qwest has alleged that enforcement plans "giving the state Commission authority to unilaterally amend the plan...[are] prohibited by state or federal law." *Id.* Additionally, Qwest has contended that any attempt by a state to modify a performance enforcement plan without its consent would violate precepts of contract law which require consent from contracting parties before implementing changes to an agreement. Qwest also has argued that changes to the QPAP, without its concurrence, would violate its due process rights under state and federal law. And, "Qwest has explicitly denie[d] that the FCC has allowed state commissions the sole authority to make changes to a performance plan." *Id.*

244. On July 16, 2001, Qwest filed its proposed QPAP with the Iowa Utility Board (the "Board"). Not surprisingly, Qwest's proposal precluded the implementation of any changes absent its consent.[114]

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[113] Washington Thirtieth Supplemental Order at 78.

[114] Conditional Statement Regarding Qwest Performance Assurance Plan. *In Re: U.S. West Communications, Inc., n/k/a Qwest Corp.*, Docket Nos. INU-00-2, SPU-00-11 (Iowa Utilities Board), May 7, 2002 at 3, 97.

245. On May 7, 2002, the Board issued its Conditional Statement Regarding QPAP which rejected Qwest's attempt to limit the ability of the Board to modify the plan. The Board found that the "Commission should retain the power to further modify the QPAP in the future and participants should be able to seek modification of the QPAP if it is not meeting the expectations of the Commission or the CLEC." *Id.* at 98.

246. In its motion for reconsideration, Qwest requested that the Board reconsider certain aspects of its decision, including the provision which recognized the authority of the Board to modify the plan. On June 7, 2002, the Board denied Qwest's motion for reconsideration.

247. Although Qwest was directed by the Board to file a revised QPAP that complied with the Board's decision, the QPAP that Qwest ultimately filed was non-compliant. Qwest's revised QPAP includes the following provisions:

> 16.1.2 Nothing in this QPAP precludes the Board from modifying the QPAP based upon its independent state law authority, subject to judicial challenge. Nothing in this QPAP constitutes a grant of authority by Qwest nor does it constitute a waiver by Qwest of any claim it may have that the Board lacks authority to make any modifications to this QPAP, including any modifications resulting from the process described in Section 16.1.

248. On June 12, 2002, the Board issued its "Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 272 Requirements," in which it found that Qwest's "updated statement of generally available terms . . ." [is] compliance with the (approximately twenty) conditional statements" that the Board issued including the two QPAP statements. However, Qwest's updated statement of generally available terms was and is plainly contrary to the Board's prior order. Most important, Qwest's Iowa QPAP is contrary to this

Commission's decisions which explicitly recognize the role that States must play in implementing changes to performance enforcement plans to reflect the dynamism in the marketplace.[115]

249. The Iowa QPAP -- which explicitly permits Qwest to challenge the authority of the State to make any changes to the plan – poses a significant risk that CLECs will be faced with protracted litigation whenever the State imposes a change to the plan that is not to Qwest's liking. Numerous state commissions, mindful of the vital role that they should and must play in shaping the contours of performance assurance plans, have adopted plans which confer no such rights of challenge upon the BOC. For example, performance enforcement plans in New York,[116] Pennsylvania,[117] and Vermont[118] contain no provisions granting the BOC the right to challenge the authority of the State to change the plan. As the California Public Utilities Commission recently found, in order to meet the public interest test "Pacific will need to agree that the Commission retains jurisdiction over the plan, **including the authority to modify any provision . . .**"[119]

[115] The QPAP also generally precludes the Iowa Board from modifying the PAP unless such action is explicitly authorized under state law authority. However, as this Commission has found, the authority of States to administer performance enforcement plans is grounded in both state and federal law. *New York 271 Order* ¶ 429 n. 1316.

[116] Compliance Filing of New York Telephone Company, d/b/a BellAtlantic-New York for the Performance Assurance Plan, Cases 97-C-0271 and 99-C-0949, April 7, 2000 at 20 (noting that the annual review to assess whether modifications to the plan are needed "will not be subject to limitation", that "[a]ll disputes will be resolved by the Commission," and that "[a]ny modifications to the Plan will be implemented as soon as is reasonably practical after Commission approval of the modifications").

[117] *Pennsylvania 271 Order* ¶ 132 (noting Verizon's "withdrawal of its previous lawsuit challenging the Pennsylvania Commission's authority to implement a PAP") (footnote omitted).

[118] Vermont Performance Assurance Plan, II (K) (August 7, 2001) at 23 (noting that, during the annual review, "[a]ll aspects of the Plan... will be subject to review" and "[a]ny modifications to the Plan will be implemented as soon as is reasonably practical after Commission approval of the modifications."

[119] Opinion on the Performance Incentives Plan for Pacific Bell Telephone Company, Public Utilities Commission of the State of California, Rulemaking 97-10-016 (March 6, 2002) at §V.

250. If Qwest is free to challenge the authority of the State to make any changes to the PAP, Qwest could render the QPAP a static document that would never evolve at a pace that is consistent with the dynamics in the telecommunications market. Qwest simply cannot have it both ways. Qwest should not be permitted to rely on a QPAP for 271 approval and claim that it does not leave open the door unreasonably to appeal, while simultaneously reserving the right to challenge the authority of the State to make any changes to the QPAP. Indeed, such a reservation of right undermines the Commission's stated goal of having "self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention." *Michigan 271 Order* ¶ 394. For all of these reasons, the Iowa QPAP cannot possibly meet the public interest requirements under Section 271.

CONCLUSION

251. Qwest's performance data provide no support for its claims that it has met its Section 271 obligations. The record evidence reveals that Qwest's performance monitoring and reporting processes are riddled with error that assure inaccuracies in performance results. These errors were revealed and confirmed in the very audits and data reconciliation processes upon which Qwest relies to support its Application. The final reports of the data reconciliations conducted by both Liberty and KPMG, in combination with Qwest's own inadequate commercial performance data, show that Qwest's claims of statutory compliance should not be credited. Indeed the pool of evidence shows that CLECs are subject to high rejection rates and low total flow through rates which increase the risk of errors and delays in the provisioning process. The evidence also shows that Qwest discriminates against CLECs in the ordering, provisioning, maintenance and repair and billing processes.

252. Moreover, Qwest's performance enforcement plans are wholly inadequate to deter future anticompetitive conduct. Since Qwest's performance data serve as the point of departure

against which any remedies will be calculated, the inaccuracies in Qwest's data necessarily compromise the effectiveness of any remedy plan. In addition, because the performance measurement and remedy plans at issue omit important measures, Qwest will suffer no financial consequences for even grossly discriminatory conduct. Worse yet, the exclusivity provision in the Idaho plan assures that Qwest will never face the fully panoply of remedies that other BOCs now face for anticompetitive conduct. And, finally, the change control provisions in the Iowa QPAP virtually guarantee that the plan will never evolve at a pace reflecting the changes in the marketplace. For all of these reasons, Qwest's Application must be rejected.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on July 3, 2002

John F. Finnegan

Attachment 1

Manual Data Collection

	A	B	C	D	E	F
1	PID ref	Indicator	Manual Collection	Manual Calculation	Manual Load	Mechanized Reporting
2	GA-1A	Gateway Availability - Interconnect Mediated Access (IMA)			X	
3	GA-1B	Gateway Availability - 'Fetch and Stuff' system			X	
4	GA-1C	Gateway Availability - Data Arbiter system			X	
5	GA-2	Gateway Availability - Electronic Data Interchange (EDI)			X	
6	GA-3	Gateway Availability - Electronic Bonding-Trouble Administration (EB-TA)			X	
7	GA-4	Gateway Availability - EXACT			X	
8	PO-8A	Jeopardy Notice Interval for Non-Designed Services - Retail				X
9	PO-8B	Jeopardy Notice Interval for Unbundled Loops and Number Portability process - Retail				X
10	PO-8C	Jeopardy Notice Interval for LIS Trunks - Retail (FGD)				X
11	PO-8D	Jeopardy Notice Interval for UNE-P	X	X	X	
12	PO-9A	Timely Jeopardy Notices for Non-Designed Services -				X
13	PO-9B	Timely Jeopardy Notice for Unbundled Loops and Number Portability process - Retail				X
14	PO-9C	Timely Jeopardy Notice for LIS Trunks - Retail	X	X	X	
15	PO-9D	Timely Jeopardy Notice for UNE-P				X
16	PO-10	LSR Accountability	X	X	X	
17	PO-15	Number of Due Date Changes Per Order				X
18	OP-2	Calls Answered within Twenty Seconds - Interconnect Provisioning Center	X	X	X	
19	OP-7	Coordinated "Hot Cut" Interval - Unbundled Loops	X			
20	OP-8B	Coordinated LNP Timeliness (associated with Loops)	X			
21	OP-8C	Non-Coordinated LNP Triggers Activated on Time	X			
22	OP-13A	Coordinated Cuts On Time (measuring % of all LSRs that are started and completed on time) - Unbundled Loop	X			
23	OP-13B	Coordinated Cuts On Time (measuring % of all LSRs that are actually started without the CLECs approval) - Unbundled Loop	X			
24	MR-2	Calls Answered within 20 seconds - Interconnect Repair Center	X	X	X	
25	MR-8	Trouble Rate - IOF only				X
26	BI-1A	Time To Provide Recorded Usage Records for UNEs and Resale		X	X	
27	BI-1B	Time To Provide Recorded Usage Records for Jointly Provided Switched Access		X	X	
28	BI-2	Invoices Delivered within 10 Days		X	X	
29	BI-3A	Billing Accuracy - Adjustments for Errors on UNE and Resale bills		X	X	
30	BI-3B	Billing Accuracy - Adjustments for Errors on Reciprocal Compensation MOUs	X	X	X	
31	BI-4A	Billing Completeness on UNE and Resale Bills		X	X	
32	BI-4B	Billing Completeness on Reciprocal Compensation MOUs		X	X	
33	DB-1	Time to Update Databases (E911, LIDB & LSS)	X	X	X	
34	DB-2	Accurate Database Updates (E911, LIDB & LSS)	X	X	X	
35	DA-1	Speed of Answer - Directory Assistance	X	X	X	
36	DA-2	Calls Answered Within Ten Seconds-Directory Assistance	X	X	X	
37	OS-1	Speed of Answer - Operator Services	X	X	X	
38	OS-2	Calls Answered Within Ten Seconds-Operator Services	X	X	X	
39	NP-1	NXX Code Activation	X	X	X	
40	CP-1A-1	Installation Interval on Virtual, Physical Caged and Shared Collocations	X	X	X	
41	CP-1A-2	Installation Interval on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	
42	CP-1B-1	Installation Interval on Cageless Collocations	X	X	X	
43	CP-1B-2	Installation Interval on Augments to Cageless Collocations	X	X	X	
44	CP-2A-1	Installation Commitments Met on Virtual, Physical Caged and Shared Collocations	X	X	X	
45	CP-2A-2	Installation Commitments Met on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	
46	CP-2B-1	Installation Commitments Met on Cageless Collocations	X	X	X	
47	CP-2B-2	Installation Commitments Met on Augments to Cageless Collocations	X	X	X	
48	CP-3A-1	Feasibility Study Interval on Virtual, Physical Caged and Shared Collocations	X	X	X	
49	CP-3A-2	Feasibility Study Interval on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	
50	CP-3B-1	Feasibility Study Interval on Cageless Collocations	X	X	X	
51	CP-3B-2	Feasibility Study Interval on Augments to Cageless Collocations	X	X	X	
52	CP-4A-1	Feasibility Study Commitments Met on Virtual, Physical Caged and Shared Collocations	X	X	X	
53	CP-4A-2	Feasibility Study Commitments Met on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	

Manual Data Collection

	A	B	C	D	E	F
54	CP-4B-1	Feasibility Study Commitments Met on Cageless Collocations	X	X	X	
55	CP-4B-2	Feasibility Study Commitments Met on Augments to Cageless Collocations	X	X	X	
56	CP-5A-1	Quote Intervals on Virtual, Physical Caged and Shared Collocations	X	X	X	
57	CP-5A-2	Quote Intervals on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	
58	CP-5B-1	Quote Intervals on Cageless Collocations	X	X	X	
59	CP-5B-2	Quote Intervals on Augments to Cageless Collocations	X	X	X	
60	CP-6A-1	Quote Commitments Met on Virtual, Physical Caged and Shared Collocations	X	X	X	
61	CP-6A-2	Quote Commitments Met on Augments to Virtual, Physical Caged and Shared Collocations	X	X	X	
62	CP-6B-1	Quote Commitments Met on Cageless Collocations	X	X	X	
63	CP-6B-2	Quote Commitments Met on Augments to Cageless Collocations	X	X	X	

Attachment 2

*********** BEGIN FORWARDED MESSAGE ***********

On 9/14/01 at 7:58 AM Whitney, Kate <kwhitney@state.mt.us> wrote:

<Reasons I don't think it's a good idea to add exclusions for TOK/FOK/NTF
<disposition codes as proposed by Qwest:
<
<1. There is no reason to assume that a trouble report was not legitimate
<just because Qwest is unable to find trouble when it responds to a
<customer's trouble report. I would posit that, in the great majority of
<instances, some problem with phone service prompts a customer to submit a
<trouble report, even if the problem may no longer be present when Qwest
<tests the line or tries to isolate the trouble. Excluding these
<disposition
<codes from these PID results will mean a significant chunk of trouble
<reports are not included in Qwest's performance results. According to data
<Qwest provided to the FCC for ARMIS reports, 29% of residential trouble
<reports and about 35% of business trouble reports regionwide were closed
<out
<to "no trouble found" in 1999, the most recent year shown on the FCC chart.
<http://www.fcc.gov/ccb/armis/sq/documents/6.pdf (go to page 2 for Qwest's
<chart)
<
<2. Qwest's proposal to include a TOK/FOK/NTF trouble report in the
<performance results only if the customer reports a trouble in the
<subsequent
<30 days that is found to be caused by a Qwest network problem makes the
<inappropriate assumption that a trouble report for which Qwest is unable to
<find the cause was not a legitimate trouble report unless the customer has
<recurring trouble. It is not necessarily the case that a trouble report
<for
<which Qwest was unable to determine the cause will recur in a month's time,
<or ever.
<
<3. Qwest has said the reason it wants to exclude the TOK, FOK and NTF
<disposition codes is because a few CLECs' results for these PIDs are
<seriously out of whack and Qwest doesn't want to make unwarranted payments
<to them under the QPAP. This is a problem that should be resolved between
<Qwest and the few offending CLECs, instead of adding exclusions to PIDs
<that
<will mean removing legitimate trouble reports from the performance results.
<Additionally, Section 13 of the proposed QPAP provides that Qwest is not
<obligated to make QPAP payments if its non-conformance with a measurement
<is
<due to bad faith acts of a CLEC.
<
<4. Qwest points out that Verizon excludes these disposition codes from its
<performance results. It should be noted that Bell South (in Florida) and
<SWBT (in Texas and presumably its other 271-approved states) do not exclude
<them.
<
<The TAG has agreed that it is appropriate to exclude trouble reports that

<have been found to be caused by the customer's action or equipment. Those
<exclusions are already in place in these PIDs. It is not appropriate to
<exclude trouble reports when Qwest was unable to determine what the problem
<was that prompted the report.
<
<Kate Whitney
<Montana PSC
<
<-----Original Message-----
<From: Michael Williams [mailto:mgwill1@qwest.com]
<Sent: Wednesday, September 12, 2001 2:24 PM
<To: roc-tag@psclist.state.mt.us
<Subject: Revised OP-5 & MR-8 PID Proposal
<
<
<TAG MEMBERS:
<
< Attached is a document containing revised draft PID proposals for OP-5
<(New Service Installation Quality) and MR-8 (Trouble Rate). This revision
<depicts how Qwest is enhancing its proposal for handling trouble tickets
<coded to "Test OK," "No Trouble Found," and "Found OK," in these two
<measurements. Specifically, these revisions provide that tickets coded to
<the indicated manner may be excluded only if there is no subsequent trouble
<ticket coded to valid network trouble within 30 days. As we explained in
<prior TAG meetings, Qwest believes these changes are very important to
<proper and fair application of OP-5 and MR-8, particularly in light of
<their inclusion in various PAP proposals.
<Regards,
<Mike Williams
<Qwest
<(See attached file: OP-5 & MR-8 PID 12Sep01DRAFT.doc)
<

************ END FORWARDED MESSAGE ***********

Attachment 3

ride the light

Qwest.

Summary of Qwest's 271 Performance Results

Jan - Apr 02 Results

State: *Colorado*

AT&T Revisions

Legend (based on number of "misses" in the 4-month period):

Classifications:	A		B		C		D
0 to 1 miss =		2 misses or 1 miss in last mo. w/ data =		3 or 4 misses w/ analysis =	Range of Results 4-mo. Avg.	3 or 4 misses =	Range of Results 4-mo. Avg.
Conclusions:	Clearly Satisfies Checklist Item		SUPPORTS Satisfying Checklist		CONDITIONALLY Supports Checklist		Adds No Support to Checklist

Low Volume Indications:

Cells that are color-coded per classifications A, B, C, or D above and have low volumes are marked as shown at right:	Vol. < 30 =		Vol. < 10 =		No Activity =	-

AT&T Revisions

CHECKLIST ITEM 1 - INTERCONNECTION

ride the light Qwest.

State: *Colorado*

Jan - Apr 02 Results

4 Mo. Avg. = 3.2 days for CLECs vs. 6.5 days for retail.

PROVISIONING

		OP-3	OP-4	OP-5	OP-6A	OP-6B
Product	**Category**	Commitments	Intervals	New Svc Trouble	Delays/Non-Facil.	Delays/Facilities
LIS Trunks	*Zone 1*	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Only 1 trunk order delayed for facilities reasons since July 2001, and that order was delayed 64 days. Identified here only out of an abundance of caution because no retail comparable. The last retail delay was 113 days.

TRUNK BLOCKING

		NI-1A	NI-1B
	Category	To Tandem Ofcs	To End Offices
LIS Trunks	*Statewide*	[redacted]	[redacted]

REPAIR

		MR-5	MR-6	MR-7	MR-8
Product	**Category**	Cleared < 4 hours	Mean Time Restore	Repeat Reports	Trouble Rate
LIS Trunks	*Zone 1*	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]

CHECKLIST ITEM 1 - COLLOCATION

ride the light
Qwest.

State: ***Colorado*** **Jan - Apr 02 Results**

INSTALLATION

Product	Category	CP- 1 Installation Intervals	CP-2 Installation Commitments
Collocation	*Forecasted (A)*	[redacted]	-
	Unforecasted (B)	[redacted]	[redacted]
	Major Infrastructure (C)	[redacted]	[redacted]
Benchmarks			90%

FEASIBILITY STUDIES

Product	Category	CP-3 Feasibility Intervals	CP-4 Feasibility Commitments
Collocation	*Statewide*	[redacted]	[redacted]

AT&T Revisions

CHECKLIST ITEM 2 - Gateway Availability

ride the light Qwest.

State: *Colorado* **_Jan - Apr 02 Results_**

Gateway Availability

Measure	Description	Benchmark	Result
GA-1 A	IMA-GUI All	99.25%	[redacted]
GA-1 B	IMA-GUI Fetch-n-Stuff	99.25%	[redacted]
GA-1 C	IMA-GUI Data Arbiter	99.25%	[redacted]
GA-2	IMA-EDI	99.25%	[redacted]
GA-3	EB-TA	99.25%	[redacted]
GA-4	EXACT	99.25%	[redacted]
GA-5	FOM	99.25%	[redacted]
GA-6	GUI Repair	99.25%	[redacted]

AT&T Revisions

CHECKLIST ITEM 2 - Change Management

ride the light Qwest.

State: ***Colorado*** ***Jan - Apr 02 Results***

Change Management

Measure	Description	Benchmark	Result
GA-7	**Timely Outage Resolution Following Software Releases**	95% within 48 hours	-
PO-16	**Timely Release Notifications**	92.5%	[redacted]

CHECKLIST ITEM 2 - PRE-ORDER

ride the light Qwest.

State: Colorado **Jan - Apr 02 Results**

Query/Response

Indicators	Categ.	Pre-Order Transaction Types: 1-Appoint. Sched.	2-Service Avail.	3-Facility Check	4-Addr. Validation	5-Get CSR .	6-Tel. No. Reserv.	7-Loop Qualif.	8-DSL Loop
PO-1	(A) IMA	[redacted]							
	(B) EDI								
	Benchmarks:	10 sec	25 sec	25 sec	10 sec	12.5 sec	10 sec	20 sec	20 sec

Timeouts

Indicators	Categ.		Benchmarks:
PO-1C	(1) IMA	[redacted]	0.5%
	(2) EDI		0.5%

Interval compares well against the standard 3-5 day intervals associated with resold POTS service. The data shows that Qwest promptly submits jeopardy notices. ***The most recent two months are at parity.***

Reject Notifications

Indicators	Categ.	1-Manual	2-Auto	
PO-3	(A) IMA	[redacted]		
	(B) EDI			
	(C) Fax ------------------------------>			[redacted]

Benchmarks : Manual: 12 business hours

Auto-rejects: 18 seconds

Benchmark: 24 hours

Qwest meets such a high percentage of unbundled loops, that jeopardy notices are rarely required.

Firm Order Confirmations

PO-5 - FOC Timeliness	A-Fully Electronic: 1 - IMA	2 -EDI	B-Electronic/Manual: 1 - IMA	2 - EDI	PO-5C FAX		PO-5D EXACT
(a) Resale	[redacted]					LIS:	[redacted]
(b) Unbundled Loops							
(c) LNP							
Benchmarks:	95% < 20 minutes		90% < standard intervals		90% < 24 hrs		85% < 8 bus. Days

Jeopardy Notifications

	(A)POTS	(B) Loops	(C) LIS	(D)UNE-P
PO-8 Timeliness	[redacted]	[redacted]	-	[redacted]
PO-9 Percent	[redacted]	8.2% - 17.9% 12.2%	[redacted]	[redacted]
Standards:	Parity	Parity	Parity	Parity

10 of 12 mos. at parity, with 3 of the most-recent 4 mos. at parity.

CHECKLIST ITEM 2 - FLOW-THROUGH

ride the light Qwest.

State: Colorado **Jan - Apr 02 Results**

PO-2A (All LSRs) *(4-Month Averages Shown)*

	IMA-GUI	IMA-EDI	TOTAL	Perf. Obj.
RESALE	72.78%	70.00%	72.22%	Diagnostic
LOOPS	49.61%	60.68%	58.22%	Diagnostic
UNE-P	61.99%	57.22%	60.51%	Diagnostic
LNP	24.15%	65.23%	60.03%	Diagnostic

PO-2B (Flow-through-eligible LSRs) *(4-Month Averages Shown)*

	IMA-GUI	IMA-EDI	TOTAL	Perf. Obj.
RESALE	[redacted]	[redacted]	[redacted]	90%
LOOPS	[redacted]	[redacted]	[redacted]	70%
UNE-P	[redacted]	[redacted]	[redacted]	75%
LNP	[redacted]	[redacted]	[redacted]	90%

Comparatively low volumes for the IMA-GUI interface.
Only 2% of LNP orders submitted with the IMA-GUI.

1. The results show a general upward trend.
2. PO-2A is a diagnostic measurement. The FCC does not consider flow-through to be a "conclusive measure of nondiscriminatory access to ordering functions, but as one indicium among many of the performance" of Qwest's OSS. Verizon Massachusetts Order at para. 77. The FCC recognizes that CLECs can impact heavily the flow-through rates that a BOC can achieve -- efficient CLECs can achieve high flow-through rates, while other, less-efficient CLECs have lower flow-through rates. Id. at paras. 78, 80. Thus, the FCC has focused less on actual flow-through rates than on whether the BOC's OSS are capable of flowing orders through. Id. paras. 77, 80.

AT&T Revisions

CHECKLIST ITEM 2 - Centers Access

Qwest. ride the light

State: Colorado **Jan - Apr 02 Results**

Pct of calls answered in 20 seconds

Measure	Center	Result
OP-2	Provisioning	[redacted]
MR-2	Repair	

Standard: Parity with retail

AT&T Revisions

CHECKLIST ITEM 2 - Billing

Qwest. ride the light

State: *Colorado* **Jan - Apr 02 Results**

Billing

Measure	Description	Standard	Result
BI-1A	**Time to provide usage records - UNE & Resale**	Parity	[redacted]
BI-1B	**Time to provide usage records - Switched access**	95%	[redacted]
BI-3A	**Billing accuracy - adjustments for errors UNE & Resale**	Parity	[redacted]
BI-3B	**Billing accuracy - adjustments for errors Reciprocal compensation**	95%	[redacted]
BI-4A	**Billing completeness - UNE & Resale**	Parity	95.6% - 98.0% 96.3%
BI-4B	**Billing completeness - Reciprocal compensation**	95%	[redacted]
PO-7A (IMA)	**Billing completion notification timeliness**	Parity	[redacted]
PO-7B (EDI)	**Billing completion notification timeliness**	Parity	-

4 Mo. Avg. = 96.3% for CLECs vs. 97.7% for retail.

11 of 12 mos. at parity

CHECKLIST ITEM 2 - UNE-PLATFORM

ride the light
Qwest.

State: *Colorado*

Jan - Apr 02 Results

There have been very few EEL requests. The data

PROVISIONING

Product	Disaggreg.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
UNE-P(POTS)	Dispatch i/MSAs					
	Dispatch o/MSA					
	No Dispatch					
UNE-P(Centrex)	Dispatch i/MSAs					
	Dispatch o/MSA					
	No Dispatch					
EELs	Zone 1	75.0% - 82.4% 79.6%				
	Zone 2					

CLEC 4-mo. avg of 5.0 days is same as retail 4-mo. avg of 5.0 days. Retail range is 1.3 to 6.2 days

All aspects of OP-6 identified here only out of an abundance of caution because no retail comparable data. When comparable retail data does exist, delays are of similar length for retail customers

REPAIR

Product	Disaggreg.	MR-3 Out of Svc<24 hrs	MR-4 All Trbl < 48 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate	MR-9 Appointments
UNE-P(POTS)	Dispatch I/ MSAs						84.4% - 96.6% 88.3%
	Dispatch o/MSA						
	No Dispatch				16.4% - 20.0% 19.0%		
UNE-P(Centrex)	Dispatch I/ MSAs					1.1% - 1.3% 1.2%	
	Dispatch o/MSA						
	No Dispatch						
EELs	Zone 1	Diagnostic					
	Zone 2						

10 of 12 mos. at parity. In April, 2 of 23 troubles were not cleared thereby causing the disparity. 4 Mo. Avg. = 97.5% for CLECs vs. 97.8% for retail.

Appears may be dark blue if "no troubles found" are excluded. See MR-7*

Eliminating dispatch, no dispatch distinctions, 4 Mo. Avg. = 94.7% for CLECs vs. 96.5% for retail.

CHECKLIST ITEM 4 - UNBUNDLED LOOPS

ride the light
Qwest.

State: Colorado

Jan - Apr 02 Results

4 Mo. Avg. = 8.0 days for CLECs vs. 13.1 days for retail. All reported mos. but April at parity.

OP-3 = 98% or higher commitments met each month. Results fluctuate into and out of parity, mo. to mo.

PROVISIONING

Loop Type	Categ.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
Analog	Zone 1	[redacted]	[redacted]	[redacted]	[illegible]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
2-Wire NL	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
ISDN-Cap.	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[illegible]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
ADSL-Cmp.	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
4-Wire NL	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	-	-	[redacted]	-	-
DS1-Cap.	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
DS3 +	Zone 1	-	-	-	-	-
	Zone 2	-	-		-	-
Line Sharing	No Dispatch	[redacted]	[redacted]	[redacted]		

CHECKLIST ITEM 4 - UNBUNDLED LOOPS

ride the light
Qwest

State: Colorado

Jan - Apr 02 Results

REPAIR

Loop Type	Categ.	MR-3 Out of Svc<24 hrs	MR-4 All Trbl < 48 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
Analog	Zone 1					
	Zone 2					
2-Wire NL	Zone 1					
	Zone 2					
ISDN-Cap.	Zone 1					
	Zone 2					
ADSL-Cmp.	Zone 1	-	-	-	-	-
	Zone 2	-	-	-	-	
Line Sharing	Dispatch i/ MSAs				(Diagnostic)	0.7% - 2.4% 1.5%
	Dispatch o/MSA	-				
	No Dispatch		88.2% - 97.4% 94.5%	8.7 - 22.2 hours 12.7 hours		

The percentage of out of service troubles is 2-5 times higher on the retail side. Out of service troubles have a higher priority in the repair queue. Thus, it is not surprising that MR-4 & MR-6 are disparate. Qwest has begun steps (e.g., CMP) necessary to change process to treat all CLEC Line Sharing troubles as out-of-service.

Would be dark blue if "no troubles found" were excluded. See MR-8*

Loop Type	Categ.	MR-5 Cleared < 4 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
4-Wire NL	Zone 1				
	Zone 2	-	-	-	
DS1-Cap.	Zone 1				3.7% - 7.8% 6.3%
	Zone 2				
DS3 +	Zone 1	-	-	-	-
	Zone 2	-	-	-	

Appears would dark blue if "nc troubles found" were excluded. See MR-7*

Percentages dr about 2% wher troubles found excluded. See

AT&T Revisions

CHECKLIST ITEM 4 - Coordinated Cuts & Loop Conditioning

State: *Colorado*

ride the light Qwest.

Jan - Apr 02 Results

Coordinated Cutover Timeliness

Loop Type	OP-13A
Analog	[redacted]
All Other	[redacted]
Benchmark	**95%**

Loop Conditioning

Category	OP-3	OP-4
	Commitments	Intervals
Zone 1	[redacted]	[redacted]
Zone 2	62.5% - ~~88.9%~~ 76.2%	[redacted]
Benchmark	**90%**	**16.5 Days**

Eliminating Zone distinctions, looking at both Zone 1 & 2 together, Qwest met 90.1% of its loop conditioning commitments, meeting the ROC's 90% benchmark.

CHECKLIST ITEM 5 - UNBUNDLED TRANSPORT

State: ***Colorado*** **Jan - Apr 02 Results** Qwest. ride the light

PROVISIONING

Product	Categ.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
UDIT-DS1	Zone 1					
	Zone 2					
UDIT >DS1	Zone 1					
	Zone 2	-	-		-	-

REPAIR

9 of 11 mos. at parity

Product	Categ.	MR-5 Cleared < 4 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
UDIT-DS1	Zone 1				
	Zone 2	-	-	-	
UDIT >DS1	Zone 1				
	Zone 2				

CHECKLIST ITEM 7 - 911

ride the light
Qwest.

State: Colorado

Jan - Apr 02 Results

PROVISIONING

Product	Categ.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
911	Zone 1	[redacted]				
	Zone 2					

REPAIR

Product	Categ.	MR-5 Cleared < 4 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
911	Zone 1	[redacted]			
	Zone 2				

AT&T Revisions

CHECKLIST ITEMS 8 & 9

State: *Colorado* ***Jan - Apr 02 Results***

Checklist # 8 - Directory Listing

Product	Categ.	DB-1C-1	
Listings	**Sub-region**	[redacted]	*(Timeliness)*
		DB-2C-1	
Listings	**Region**	[redacted]	*(Accuracy)*

Checklist # 9 - NXX Code Activation

Product	Categ.	NP-1A	
NXX Code	**State**	[redacted]	*(Timeliness)*

AT&T Revisions

CHECKLIST ITEM 10 & 11

State: *Colorado* ***Jan - Apr 02 Results***

Checklist # 10 - Databases and Signaling

Product	Categ.	DB-1B
LIDB	**State**	[redacted]

(Timeliness)

Checklist # 11 - LNP (Local Number Portability)

PROVISIONING

Product	Categ.	OP-8B	OP-8C	OP-17A
L N P	**State**	[redacted]	[redacted]	[redacted]
		95%	95%	98.25%

REPAIR

Product	Categ.	MR-11A Out of Svc<24 hrs	MR-11B All Trbl < 48 hours
L N P	**State**	[redacted]	[redacted]
		Parity	Parity

AT&T Revisions

CHECKLIST ITEM 13

ride the light
Qwest.

State: ***Colorado*** ***Jan - Apr 02 Results***

Checklist # 13 - Reciprocal Compensation

11 of 12 mos. at parity

Product	Categ.	BI-3B	BI-4B	
Reciprocal Compensation	State			*(Billing Accuracy and Completeness)*

(against 95% Benchmarks)

CHECKLIST ITEM 14 - RESALE: Non-designed Products

State: ***Colorado***

Jan - Apr 02 Results

PROVISIONING

ride the light
Qwest.

OP-3 = 100% comitments met.

Only 2 orders delayed in the last 12 mos.

Product	Disaggreg.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
Residence	Dispatch i/MSAs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Dispatch o/MSA	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	No Dispatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Business	Dispatch i/MSAs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Dispatch o/MSA	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	No Dispatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Centrex	Dispatch i/MSAs	-	-	[redacted]	-	-
	Dispatch o/MSA	-	-	[redacted]	-	-
	No Dispatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Centrex-21	Dispatch i/MSAs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Dispatch o/MSA	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	No Dispatch	[redacted]	[illegible]	[redacted]	[redacted]	[redacted]
PBX	Dispatch i/MSAs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Dispatch o/MSA	-	-	[redacted]	-	-
	No Dispatch	[redacted]	[illegible]	[redacted]	[illegible]	[redacted]
Qwest DSL	Dispatch i/MSAs	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Dispatch o/MSA	-	-	[redacted]	-	-
	No Dispatch	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

AT&T Revisions

CHECKLIST ITEM 14 - RESALE: Non-designed Products

ride the light
Qwest.

State: Colorado

Jan - Apr 02 Results

REPAIR

One failure to clear a service affecting trouble within 48 hours caused the disparity.

11 of 12 mos. at parity

Product	Disaggreg.	MR-3 Out of Svc<24 hrs	MR-4 All Trbl < 48 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate	MR-9 Appointments
Residence	Dispatch I/ MSAs						
	Dispatch o/MSA					1.6% - 1.9% 1.8%	
	No Dispatch						
Business	Dispatch I/ MSAs						
	Dispatch o/MSA						
	No Dispatch						
Centrex	Dispatch I/ MSAs						
	Dispatch o/MSA					0.8% - 1.1% 0.9%	
	No Dispatch						
Centrex-21	Dispatch I/ MSAs						
	Dispatch o/MSA	-					
	No Dispatch						
PBX	Dispatch I/ MSAs						
	Dispatch o/MSA	-	-	-	-		-
	No Dispatch						
Qwest DSL	Zone 1						
	Zone 2	-	-	-	-		

AT&T Revisions

CHECKLIST ITEM 14 - RESALE: Designed Products

State: *Colorado* **PROVISIONING** Qwest ride the light

Jan - Apr 02 Results

Product	Categ.	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
DS0	Zone 1	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zone 2	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
DS1	Zone 1	[redacted]	[redacted]		[redacted]	[redacted]
	Zone 2	[redacted]	-		[redacted]	[redacted]
DS3	Zone 1	-	-	[redacted]	-	-
	Zone 2	[redacted]	-	[redacted]	[redacted]	[redacted]
Frame Rel.	Zone 1	-	-	[redacted]	-	-
	Zone 2	-	-	[redacted]	-	-

1. OP-5 has inherent limitations that cause it to understate new service quality where there are multiple lines installed per order. The reason is that the numerator is driven by troubles that are reported per circuit, whereas the denominator is on a per-order basis. This situation is significantly compounded where, as with DS1s, there are multiple circuits per DS1. Hence, for DS1s and higher, OP-5 can indicate if Qwest is satsifying the standard, but if not, this measurement cannot conclusively indicate that Qwest is not satisfying the standard.
2. In this case, volume is very low, with the average number of CLEC DS1 orders installed per month being less than one.

AT&T Revisions

CHECKLIST ITEM 14 - RESALE: Designed Products

State: Colorado

REPAIR

ride the light Qwest.

Jan - Apr 02 Results

Product	Categ.	MR-5 Cleared < 4 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
DS0	Zone 1				
	Zone 2				
DS1	Zone 1			-	
	Zone 2				
DS3	Zone 1	-	-	-	
	Zone 2	-	-	-	
Frame Rel.	Zone 1				
	Zone 2	-	-	-	

Would be dark blue if "no troubles found" were excluded. See MR-7* and MR-8*

Only one trouble report led to the disparity in April.

Qwest. ride the light

Summary of Qwest's 271 Performance Results

AT&T Revisions

Jan - Apr 02 Results

State: *Nebraska*

Legend (based on number of "misses" in the 4-month period):

Classifications:	A		B		C		D
0 to 1 miss =		2 misses or 1 miss in last mo. w/ data =	Range of Results 4-mo. Avg.	3 or 4 misses w/ analysis =	Range of Results 4-mo. Avg.	3 or 4 misses =	Range of Results 4-mo. Avg.
Conclusions:	Clearly Satisfies Checklist Item		SUPPORTS Satisfying Checklist		CONDITIONALLY Supports Checklist		Adds No Support to Checklist

Low Volume Indications:

Cells that are color-coded per classifications A, B, C, or D above and have low volumes are marked as shown at right:	Vol. < 30 =		Vol. < 10 =		No Activity =	-

AT&T Revisions

CHECKLIST ITEM 1 - INTERCONNECTION

Qwest. ride the light

State: *Nebraska*

Jan - Apr 02 Results

PROVISIONING

Product	Category	OP-3 Commitments	OP-4 Intervals	OP-5 New Svc Trouble	OP-6A Delays/Non-Facil.	OP-6B Delays/Facilities
LIS Trunks	*Zone 1*					
	Zone 2					

Identify out of an abundance of caution because no comparable retail data in April. 4 Mo. Avg. = 2.4 days for CLECs vs. 4.3 days for retail.

TRUNK BLOCKING

	Category	NI-1A To Tandem Ofcs	NI-1B To End Offices
LIS Trunks	*Statewide*		

REPAIR

Product	Category	MR-5 Cleared < 4 hours	MR-6 Mean Time Restore	MR-7 Repeat Reports	MR-8 Trouble Rate
LIS Trunks	*Zone 1*				
	Zone 2				

CHECKLIST ITEM 1 - COLLOCATION

ride the light
Qwest.

State: ***Nebraska*** ***Jan - Apr 02 Results***

INSTALLATION

Product	Category	CP- 1 Installation Intervals	CP-2 Installation Commitments
Collocation	*Forecasted (A)*	-	-
	Unforecasted (B)	[redacted]	[redacted]
	Major Infrastructure (C)	[redacted]	[redacted]
Benchmarks			90%

FEASIBILITY STUDIES

Product	Category	CP-3 Feasibility Intervals	CP-4 Feasibility Commitments
Collocation	*Statewide*	[redacted]	[redacted]